

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
January 3, 2000 Session

**DONALD M. TAYLOR v. MICHAEL C. GREENE**  
**COMMISSIONER OF THE TENNESSEE**  
**DEPARTMENT OF SAFETY**

**Appeal from the Chancery Court for Davidson County**  
**No. 98-1591-I Irvin H. Kilcrease, Jr., Chancellor**

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**No. M1999-00594-COA-R3-CV - Filed January 22, 2002**

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Donald M. Taylor appeals the judgment of the Chancery Court of Davidson County, which affirmed forfeiture of his vehicle by the Administrative Law Judge following a hearing pursuant to the Tennessee Administrative Procedures Act. Tenn. Code Ann. § 4-5-322. We find forfeiture of the vehicle to be an excessive fine under the Eighth Amendment to the Constitution of the United States and under article I, section 16 of the Tennessee Constitution, and accordingly, the decision of the Chancellor is reversed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Reversed**

WILLIAM B. CAIN, J., delivered the opinion of the court, in which BEN H. CANTRELL, P.J., M.S. and PATRICIA J. COTTRELL, J., joined.

John M. Higgason, Jr., Chattanooga, Tennessee, for the appellant, Donald M. Taylor.

Paul G. Summers, Attorney General and Reporter; Paula D. Godsey, Nashville, Tennessee, for the appellee, Commissioner Michael C. Greene.

**OPINION**

In April of 1986, Petitioner Donald Taylor was convicted of driving while under the influence of an intoxicant. As provided by Tennessee Code Annotated section 55-10-403 (1986 Supp.), the court that convicted Mr. Taylor was required to “prohibit such convicted person from driving a vehicle in the state of Tennessee for a period of time of one (1) year.” On October 6, 1997, more than eleven years after the revocation of his license, Mr. Taylor was involved in a minor traffic accident in Chattanooga, Tennessee. The only citation issued in connection with this accident was issued to Mr. Taylor for committing the offense of “Driving on Revoked Due to DUI (TCA 55-50-504, 40-33-201, et seq.)” Pursuant to this citation, Mr. Taylor’s Chevrolet 4x4 Pickup Truck was seized.

Mr. Taylor petitioned for an administrative review of the seizure on October 23, 1997. The initial order of forfeiture was entered on April 9, 1998; this order became final on April 20, 1998. Mr. Taylor petitioned for judicial review of that final order on May 22, 1998, and by order entered on February 25, 1999, the Chancellor denied the petition, relying chiefly on an opinion from the Attorney General. 90-48 *Op. Tenn. Att’y Gen.* 2 (1990). From that action of the trial court, Mr. Taylor appeals asserting the following issues:

- (1) Whether the forfeiture of Mr. Taylor’s vehicle pursuant to Tennessee Code Annotated section 55-50-504 violates Mr. Taylor’s constitutional due process rights;
- (2) Whether the forfeiture violates the excessive fines prohibitions of the United States and Tennessee Constitutions;
- (3) Whether the state improperly interpreted section 55-10-403 to allow forfeiture of a vehicle after the expiration of the statutory one-year period of revocation.

The seizure of Mr. Taylor’s truck was consistent with the provisions of sections 55-50-504 and 40-33-201. Section 55-50-504 provides in pertinent part:

(a)(1) A person who drives a motor vehicle on any public highway of this state at a time when the person’s privilege to do so is cancelled, suspended, or revoked commits a Class B misdemeanor. A person who drives a motor vehicle on any public highway of this state at a time when the person’s privilege to do so is cancelled, suspended or revoked because of a conviction for vehicular assault under § 39-13-106, vehicular homicide under § 39-13-213, or driving while intoxicated under § 55-10-401 shall be punished by confinement for not less than two (2) days nor more than six (6) months, and there may be imposed, in addition, a fine of not more than one thousand dollars (\$1,000).

\* \* \*

(h)(1) The vehicle used in the commission of a person’s violation of § 55-50-504, when the original suspension or revocation was made for a violation of § 55-10-401, or a statute in another state prohibiting driving under the influence of an intoxicant, is subject to seizure and forfeiture in accordance with the procedure established in title 40, chapter 33, part 2. The department is designated as the applicable agency, as defined by § 40-33-202, for all forfeitures authorized by this subsection.

(2) For purposes of clarifying the provisions of this subsection and consistent with the overall remedial purpose of the asset forfeiture procedure, a vehicle is subject to seizure and forfeiture upon the arrest or citation of a person for driving while such person’s driving privileges are cancelled, suspended or revoked. A conviction for the criminal offense of driving while such person’s driving privileges are cancelled, suspended or revoked is not required.

Tenn. Code Ann. § 55-50-504 (1998).

Disposition of this case is controlled by the opinion of this Court issued December 18, 2001 in *Hawks v. Greene*, No. M1999-02785-COA-R3-CV, 2001 WL 1613889 (Tenn. Ct. App.). In the *Hawks* case, Mrs. Hawks had been convicted of driving under the influence on March 28, 1996. She became eligible to apply for a new license one year after April 25, 1996 but did not do so until December 1997. On September 10, 1997, more than one year after her revocation, she was stopped for speeding, and on September 16, 1997, the Department of Safety issued a forfeiture warrant pursuant to Tennessee Code Annotated section 55-50-504(h)(1). At the hearing before the Administrative Law Judge, forfeiture of Mrs. Hawks' van was ordered. She petitioned the Chancery Court of Davidson County for review. Upon such review, the chancery court concluded that Mrs. Hawks' vehicle was subject to forfeiture under the provisions of section 55-50-504(h). The trial court found, however, that forfeiture of her vehicle constituted an excessive fine prohibited both by the Eighth Amendment to the United States Constitution and by article I, section 16 of the Tennessee Constitution.

The only substantial difference between the factual situation in *Hawks* and the case at bar is that Mrs. Hawks was cited for speeding sixteen months after her driver's license had been revoked while Mr. Taylor was cited for his minor traffic accident more than eleven years after his driver's license had been revoked. It will serve no purpose to repeat the exhaustive treatment given this subject in *Hawks*, even though the lapse of eleven years between a DUI conviction and an unrelated minor traffic accident allows for a harsh and totally inequitable punishment. A brief excerpt from *Hawks* is revealing:

Additionally, just as a resident's license is not automatically restored at the expiration of the revocation period, see generally Tenn. Code Ann. § 55-50-502, the suspension of a nonresident's privilege to operate a motor vehicle on the highways of this state "does not automatically spring to life at the end of the period of ineligibility, as if the order never had been entered . . . ." See *Colorado Dept. of Revenue, Motor Vehicle Div. v. Smith*, 640 P.2d 1143, 1145 (Colo. 1982); see also *State v. Banicki*, 933 P.2d 571, 573 (Ariz. App. 1997) (driving privileges not automatically restored). The completion of the period of revocation merely makes the nonresident driver eligible for reinstatement of his Tennessee driving privileges. See Tenn. Code Ann. § 55-50-502(d)(1); - (e)(3); see also Tenn. Op. Atty. Gen. No. 86-097 (May 19, 1986) ("[o]nce a license or driving privileges have been suspended under this chapter, the motorist may restore his privileges by satisfying certain requirements which usually include the payment of a restoration fee.")

. . . the proof introduced revealed that the Appellant's driving privilege in this state was suspended. Absent proof of compliance with reinstatement procedures, the evidence is sufficient to support a conviction for driving while license revoked.

*State v. Thompson*, No. W1999-01001-CCA-R3-CD, 2000 WL 1843249, at \*4-5 (Tenn. Crim. App. Dec. 15, 2000) (*perm. app. denied*, recommended for publication).

Thus, a license remains revoked until it is reissued after compliance with statutory requirements. A person who drives on public roads after revocation of his or her license, but before reissuance or renewal of a license, is “driving at a time when the person’s privilege to do so is canceled, suspended, or revoked” within the meaning of Tenn. Code Ann. § 55-50-504(a)(1). When the original revocation was due to a conviction for DUI, the driving privilege remains revoked “because of” that conviction.

The history of the General Assembly’s actions to distinguish the offense of driving on a license revoked for conviction of specific offenses, including driving under the influence, from the offense of driving on a license revoked for any other reason, through enacting enhanced punishments for the former, also supports the Department’s interpretation. *See* 1992 Tenn. Pub. Acts, ch. 722; 1994 Tenn. Pub. Acts, ch. 892. In addition to these general actions, one specific piece of legislative history is directly relevant. In 1996 the legislature amended Tenn. Code Ann. § 55-50-504 to provide for the seizure and forfeiture of vehicles used in the commission of the offense of driving at a time when a person’s license is revoked for DUI. During debate on the bill which resulted in this amendment, now codified as Tenn. Code Ann. § 55-50-504(h), the sponsor stated, “There’s a certain period of time after you get a DUI that you can get reinstated and get your license back and so if you’re foolish enough not to go and get your license back, if you’re foolish enough to have a DUI and drive on a revoked license, yes that car can be confiscated.” Senator Cooper, *Discussion of Senate Bill 2594*, Apr. 11, 1996.

*Hawks v. Greene*, 2001 WL 163889, at \* 5.

It was Mr. Taylor’s neglect in failing to apply to the Department of Safety for a new license for more than a decade after he was eligible to do so that has brought about his present predicament resulting in his vehicle being subject to forfeiture under the provisions of Code section 55-50-504(h).

As in *Hawks*, Mr. Taylor asserts that the forfeiture of his vehicle violates the excessive fines clause of the Eighth Amendment to the Constitution of the United States and article I, section 16 of the Tennessee Constitution. The United States Supreme Court in *Austin v. United States*, 509 U.S. 602, 113 S.Ct. 2801 (1993) held that the excessive fines prohibition of the Eighth Amendment applied to punitive forfeitures whether in personam or in rem. The Supreme Court of Tennessee, in *Stuart v. State Department of Safety*, 963 S.W.2d 28 (Tenn. 1998), held that article I, section 16 of the Tennessee Constitution was coextensive with the Eighth Amendment to the U.S. Constitution and was applicable to punitive forfeitures even if such forfeitures were civil in nature. *Stuart*, 963 S.W.2d at 34.

Again, repetition of extensive statements from *Hawks* is unnecessary. It suffices to say that, as in *Hawks*, the forfeiture in this case will not withstand application of the *Stuart* factors. We must apply a proportionality test involving:

- (1) the harshness of the penalty compared with the gravity of the underlying offense;
- (2) the harshness of the penalty compared with the culpability of the claimant; and
- (3) the relationship between the property and the offense, including whether use of the property was (a) important to the success of the crime, (b) deliberate and planned or merely incidental and fortuitous, and (c) extensive in terms of time and spatial use.

*Stuart*, 963 S.W.2d at 35.

In this case, when dealing with the harshness of the penalty as compared to the gravity of the offense, it is observed that the underlying DUI conviction occurred eleven years before the accident and ten years after Mr. Taylor became eligible to apply for a new license. As with *Hawks*, the culpability of Taylor lies with his failure to timely apply for a new license. Also, as with *Hawks*, Mr. Taylor immediately applied for a new license after the accident, fully complied with the financial responsibility laws of Tennessee and paid his settlement to the party suffering property damage on October 6, 1997.

The forfeiture in this case simply fails the *Austin-Stuart-Hawks* proportionality test in that the only injury to the state, occurring eleven years after the underlying DUI, was the failure of Taylor to simply apply for a new license. In view of all the facts of this case, the forfeiture of his vehicle is an excessive fine prohibited by the Eighth Amendment to the U.S. Constitution and article I, section 16 of the Tennessee Constitution.

We, therefore, reverse the Chancellor and remand the case for such further proceedings as may be necessary. Costs of this cause are assessed against Michael C. Greene, Commissioner of the Tennessee Department of Safety.

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WILLIAM B. CAIN, JUDGE